



The State University
of New York

Office of General Counsel

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Promoting Diversification of Ownership in the)	MB Docket No. 07-294
Broadcasting Services)	
To: The Commission		

COMMENTS OF THE STATE UNIVERSITY OF NEW YORK

The State University of New York¹ welcomes this opportunity to comment on the Federal Communications Commission’s (“Commission”) *Sixth Further Notice of Proposed Rulemaking* regarding proposed revisions to Form 323-E, the ownership report for noncommercial educational (“NCE”) broadcast stations (the “Notice”).²

¹ The Board of Trustees of the State University of New York is the Licensee/Permittee that registers on behalf of radio stations with the following call letters: WCDB; WHRW; WUSB; WBSU; WBNY; WSUC-FM; WGSU; WFNP; WRVO; WRVN; WRVJ; WQKE; WETD; WNYO; WAIH; WCVF-FM; WRVD; WONY. The members of the Board of Trustees are appointed by the Governor of the State of New York, subject to confirmation by the New York State Senate. Alongside the Members of the Board of Trustees, the State University of New York, on form 323-e, likewise lists information for the Chancellor and Senior Officers. These officers are appointed by the State University of New York Board of Trustees.

² In the Matter of Promoting Diversification of Ownership in the Broadcasting Services, *Sixth Further Notice of Proposed Rulemaking*, MB Docket No. 07-294 (rel. Jan. 3, 2013) [hereinafter “Sixth FNPRM”].

INTRODUCTION

Like others who have commented on this matter, the State University of New York firmly supports the Commission's goal of promoting "diverse ownership of broadcast stations, including ownership by women and minorities."³ The University and the State of New York share this goal and, in fact, have used State law and University policy to increase the proportion of contracts and services provided by Minority and Women Owned Business Enterprises (MWBE) and to provide educational and employment options for a diverse population in our State and beyond. While the University shares the commitment to diversity in radio station ownership, the method chosen by the Commission of requiring submission of Social Security Numbers will have little positive impact on diversity in the noncommercial sector, while chilling the University's ability to recruit the leadership needed for our continued growth. Further, the request for such Social Security Numbers may be unlawful under the *Privacy Act*.

For the reasons stated below, the State University of New York believes that the Commission should reconsider the requirement for noncommercial radio registrants to provide Social Security Number information.

I. THE STATE UNIVERSITY OF NEW YORK REGISTERS AS A UNIVERSITY, WITH NO INDIVIDUAL OWNERS

The State University of New York is governed by a Board of Trustees appointed by the Governor and subject to the confirmation of the New York State Senate.⁴ The University does not control appointments to the Board. Members of the Board of Trustees serve without

³ *Id.* at ¶ 4.

⁴ N.Y. EDUC. LAW §353.

“compensation for their services but [are] reimbursed for their expenses actually and necessarily incurred by them in the performance of their duties.”⁵ The State University of New York, the Licensee/Pemittee of the stations with the call letters listed in Footnote 1, above, does not “own” these stations in the manner that a commercial station owner “owns” its stations. The leadership of the University, appointed by the Board of Trustees, and the Trustees themselves, through Commission Form 323-E, register as Licensee/Pemittee on behalf of the State of New York and its nineteen and a half million people. Those nineteen and a half million, the People of the State of New York, are among the most diverse ownership groups in existence. They include representatives of every nation on earth and every group and subgroup imaginable.

Unlike the owners of commercial stations, the “owners” of the University’s stations take no financial interest in the stations. There are no shares issued and no distribution of profits. There is no debt or equity interest held by any individual or group, save the Trustees on behalf of the People of the State of New York. Provision of Social Security Numbers of Trustees and senior University leadership will do nothing to improve the national statistics on ownership. Membership on the Board is subject to the political process, and our political leaders are ultimately accountable to the people. Whether or not a Trustee ultimately must provide her or his Social Security Number is too attenuated to cause the political leaders to choose more diverse Trustees in the appointment process. This is similar to the noncommercial “ownership” of other stations across the country by not-for-profit boards or governmental entities.

In any event, due to the highly diverse nature of the SUNY Board of Trustees and senior leadership, as well as the similarly diverse leadership of other educational, government, and not-

⁵ N.Y. EDUC. LAW §353(1).

for-profit controlled stations, if such data was collected and aggregated with the data of commercial owners, the national landscape of ownership diversity would not be accurate. The diverse noncommercial entities would skew the diversity data of commercial owners and make them look more diverse than they truly are. In light of the benefits and drawbacks of commercial ownership, the diversity of the owners is an important question. Combining it with the natural diversity of noncommercial owners such as the State University of New York will be a disservice to the goal of increasing overall diversity, especially among commercial owners.

Therefore, since requiring Social Security Numbers for Boards such as the State University of New York and its sister educational and not-for-profit institutions will do little or nothing to improve diversity, the Commission should not implement such a requirement for “owners” of noncommercial stations.

II. REQUIRING THAT STATE UNIVERSITY OF NEW YORK TRUSTEES AND SENIOR LEADERS, AS WELL AS SIMILARLY CONSTITUTED ENTITIES PROVIDE SOCIAL SECURITY NUMBERS WILL PRESENT AN UNACCEPTABLE RISK OF BREACH AND CHILL MEMBERSHIP AND LEADERSHIP IN THE UNIVERSITY AND SIMILAR ENTITIES

The previous section addressed the issues of whether diversity would be enhanced by provision of Social Security Numbers by members of governing boards such as the University’s Board of Trustees. A second important issue is the risk of a data breach wherein Trustees’ Social Security Numbers are released to the public or criminals, combined with the general reluctance of individuals in this day and age to share private data when not necessary. This risk presents will strongly discourage individuals from serving on the Board of the University and other similarly situated entities.

The privacy and data security issues associated with the proposed information collection cannot be understated. Allowing for the collection of Social Security Numbers needlessly places the University's Board members and senior leadership at significant risk for identity theft. Such concerns are eminently reasonable and, indeed, it is not difficult to imagine that reasonable University officials would find the disclosure of this highly private and sensitive data objectionable. Using today's technologies, there is no surefire way for the Commission to ensure the database housing this information would be secure enough to fully protect such sensitive information from disclosure. Numerous reports demonstrate that the Federal Government is a target rich environment for security data breaches.⁶ According to a recently published article, in the past four years "our federal and state governments have lost more than 94 million data records."⁷ Such potential for exposure is not necessary for the proper functioning of the Commission and, at least with respect to the noncommercial education stations, like those Licensed/Permitted to the State University of New York, requiring disclosure of this information will serve no practical use.

⁶ See e.g., Staff Report, Agency Data Breaches Since January 1, 2003, Tom Davis, Chairman, Henry A. Waxman, Ranking Member, U.S. House of Representatives, 109th Congress (Oct. 13, 2006 (noting hundreds of instances of data breaches involving sensitive personal information, which were caused by various means, including, *inter alia*, employee carelessness, contractor misconduct and third-party thefts. In many cases, the agency suffering the breach was not even aware of what information was lost or who and how many individuals may have been affected by the breach)).

⁷ See Ondrej Krehel, *The 10 Worst Government Data Breaches of 2012*, CREDIT.COM NEWS AND ADVICE (Dec. 5, 2012), <http://blog.credit.com/2012/12/the-10-worst-government-data-breaches-of-2012>; See also, Michael Froomkin, *Government Data Breaches*, 24 BERKELEY TECH. L.J. 1019 (2009) (discussing the problems and serious privacy concerns associated with government data breaches).

Additionally, mandating that Trustees and senior leadership disclose this private and sensitive information will likely have a deterrent effect on the willingness of individuals, including minorities and women in these positions now (and in the future), to agree to serve for the benefit of the People of the State of New York. An individual's Social Security Number is considered to be very private and we hear consistent messages that such information should not be shared. Currently, the State University of New York has no reason to request or demand that a Trustee provide the University with her or his Social Security Number. Should one or more Trustee, due to the risk of a breach or discomfort with sharing such a private data point, refuse to provide his or her number, it would place the University in an untenable position. The University would be left with three awful choices: (1) ask the Trustee to resign⁸ and lose the invaluable experience and expertise in operating what is the nation's largest public University system; (2) pay the fines assessed by the Commission; or (3) withdraw from Licensing/Permitting our 18 stations, robbing students of the experience of working in student or public radio, resulting in hundreds of job losses among those professionals who currently serve these stations, and depriving listeners, especially those in rural areas who lack other options, of the local news and content that is de rigueur on many of these stations. Such choices should not be forced upon the University, especially when considering collection of this information for a Licensee/Permittee such as SUNY will not promote the benefits the Commission seeks from this proposal.

⁸ Note that as discussed earlier, the University has no control over such appointments. If a Trustee in such a case was asked to resign and refused, the University would have no recourse.

In the University's view, the Commission should continue to permit those with attributable interests in noncommercial public educational broadcasting stations to obtain special use FRNs without penalty. To the extent useful, ethnicity, gender, and other data can still be requested; but, importantly, such reporting without the disclosure of Social Security Numbers, will not have the effect of discouraging individuals from serving for the good and benefit of the State of New York. The accuracy of the information provided can be certified by the noncommercial registrants such as the University and, if necessary, the Commission can conduct random audits to verify the accuracy of information provided for whatever purposes it determines are necessary in this context.

At this juncture, the Commission has not identified any legitimate reason why additional information should be required for it to obtain accurate and verifiable noncommercial educational "ownership" data. To proceed as proposed in the Sixth FNPRM, forcing individuals to choose between providing their Social Security Numbers and declining to serve, and forcing institutions whose Trustees are appointed through the political process to choose between asking members to resign, paying fines, or turning in their licenses, cannot be justified, especially where production of such information will not bear a positive effect on the goal of increasing the diversity in the ownership of broadcast stations by women and minorities.

III. THE *PRIVACY ACT* PROHIBITS THE COMMISSION FROM COLLECTING SOCIAL SECURITY NUMBERS OF INDIVIDUALS AFFILIATED WITH NONCOMMERCIAL ENTITIES LIKE THE UNIVERSITY

The purpose of the *Privacy Act* (5 U.S.C. § 552a) is to protect the security of personally identifiable information for individuals. Such protection was deemed so important by our Federally elected officials that not only did Congress afford individuals the ability to control the

information that would be disclosed, including specifically highly sensitive information like Social Security Numbers, but Congress also enacted provisions creating a private cause of action and made it “unlawful” to require disclosure of such information, except in certain limited circumstances.⁹ The legislative history relating to the *Privacy Act* does not distinguish between information relating to a person acting in his or her individual capacity versus the same individual acting in an entrepreneurial role. Thus, the protections afforded to individuals under the Privacy Act should be applicable and prevent the forced disclosure of Social Security Numbers of Trustees and senior leadership of the University by the Commission.

Moreover, even if the Commission’s previously articulated interpretation of the Privacy Act¹⁰ is correct, and there is a distinction between persons acting in their “individual” versus “entrepreneurial” capacities within the context of the *Privacy Act*, with respect to the University and other non-commercial educational broadcast stations, no such entrepreneurial activity is occurring. The University is, by its legal definition, not an entrepreneurial entity, it is an educational body within the State of New York. Therefore, at least in the context of stations like those Licensed/Permitted to the University’s Board of Trustees, the protections of the *Privacy Act* should be afforded. The University submits that the Commission should not require the disclosure of the Trustees’ and senior leadership’s Social Security Numbers.

⁹ See 5 U.S.C. 552a note, § 7 – “(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual’s refusal to disclose his social security account number.”

¹⁰ Sixth FNPRM at ¶ 18.

CONCLUSION

For the above stated reasons, the State University of New York, while strongly supporting the Commission's goal of increasing diverse ownership of radio stations in general, must nonetheless oppose the requirement that noncommercial Licensees/Permittees provide the Social Security Numbers of their Board members and leadership. Such information will do little or nothing to increase diversity among noncommercial Licensees/Permittees like the State University of New York, disclosure will risk a devastating breach and have a chilling effect on the University's ability to attract precisely the dynamic, diverse and committed leadership we require to advance the our mission of teaching, research and service, and the request for such Social Security Numbers may be unlawful under the *Privacy Act*.

Respectfully submitted,

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